



February 3, 2009

SENATE BILL No. 68

DIGEST OF SB 68 (Updated January 29, 2009 1:23 pm - DI 110)

Citations Affected: IC 27-1.

Synopsis: Application of the Uniform Electronic Transaction Act in insurance law. Provides that the Uniform Electronic Transaction Act applies to certain insurance law. Requires that notices of meetings to shareholders, members, or policyholders of insurance corporations be delivered: (1) at least 10 business days; or (2) if notice is mailed other than by first class or registered mail, at least 30 but not more than 60 business days; before the date of the meeting. (Current law requires notice at least 30 days before the date of the meeting.) Establishes that certain actions without meetings are organic actions. Establishes when certain actions are effective.

Effective: July 1, 2009.

Paul

January 7, 2009, read first time and referred to Committee on Insurance and Financial Institutions.

February 2, 2009, amended, reported favorably — Do Pass.

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SB 68—LS 6673/DI 97+



February 3, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 68

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-1-2-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 3.5. Unless and to the extent limited or prohibited in**
4 **the articles of incorporation or bylaws of a corporation, IC 26-2-8**
5 **applies to this article.**
- 6 SECTION 2. IC 27-1-7-1.3 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2009]: **Sec. 1.3. As used in this chapter, "deliver" or "delivery"**
9 **means any method of delivery used in conventional commercial**
10 **practice, including delivery by hand or mail, commercial delivery,**
11 **and electronic transmission.**
- 12 SECTION 3. IC 27-1-7-1.5 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2009]: **Sec. 1.5. As used in this chapter, "electronic transmission"**
15 **or "electronically transmitted" means any process of**
16 **communication not directly involving the physical transfer of**
17 **paper that is suitable for retention, retrieval, and reproduction of**

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1 **information by the recipient.**

2 SECTION 4. IC 27-1-7-1.7 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2009]: **Sec. 1.7. As used in this chapter, "sign" or "signature"**
5 **means:**

6 **(1) a manual, facsimile, or conformed signature; or**

7 **(2) an electronic signature (as defined in IC 26-2-8-102).**

8 SECTION 5. IC 27-1-7-7 IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) All meetings of shareholders,
10 members, or policyholders shall be held within this state and at the
11 principal office of the corporation, unless otherwise provided in the
12 articles of incorporation.

13 (b) An annual meeting of shareholders, members, or policyholders
14 shall be held within five (5) months after the close of each fiscal year
15 of the corporation and at such time within that period as the bylaws
16 may provide. The failure to hold the annual meeting at the designated
17 time shall not work any forfeiture or a dissolution of the corporation.
18 The time and place of such annual meeting of a mutual company may
19 be stated in the policies thereof or notice of such meeting shall be given
20 as provided in subsection (d).

21 (c) Special meetings of the shareholders, members, or policyholders
22 may be called by the president, by the board of directors, by
23 shareholders, members, or policyholders holding not less than
24 one-fourth (1/4) of all of the shares or policies outstanding and entitled
25 by the articles of incorporation to vote on the business proposed to be
26 transacted thereat, or by such other officers or persons as the bylaws
27 may provide.

28 (d) A written or printed notice stating the place, day, and hour of the
29 meeting, and in case of a special meeting, the purpose or purposes for
30 which the meeting is called, shall be delivered or mailed by the
31 secretary, or by the officers or persons calling the meeting, to each
32 shareholder, member, or policyholder of record, entitled by the articles
33 of incorporation and by this article to vote at such meeting, at such
34 address as appears upon the records of the corporation: ~~at least thirty~~
35 ~~(30) days before the date of the meeting.~~

36 **(1) if subdivision (2) does not apply, at least ten (10) business**
37 **days; or**

38 **(2) if notice is mailed by other than first class or registered**
39 **mail, at least thirty (30) business days but not more than sixty**
40 **(60) business days;**

41 **before the date of the meeting. Notice by electronic transmission is**
42 **written notice.** Notice of any meeting of the shareholders, members,

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or policyholders may be waived in writing by any shareholder, member, or policyholder if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

(e) Unless otherwise provided in the articles of incorporation or by the provisions of this article or the bylaws, at any meeting of the shareholders, members, or policyholders, a majority of the shares of the outstanding capital stock entitled by the articles of incorporation to vote at such meeting or in the case of a company other than a stock company, not less than ten percent (10%) of the policyholders or members entitled to vote at such meeting, represented in person or by proxy, shall constitute a quorum.

(f) Unless otherwise provided in the articles of incorporation or bylaws, action to be taken at a meeting of shareholders, members, or policyholders may be taken without a meeting if the action is taken by all the shareholders, members, or policyholders entitled to vote on the action. **Actions taken without a meeting under this subsection are organic actions (as defined in IC 26-2-8-102).** The action must be evidenced by one (1) or more written consents, **which includes consents signed by electronic means**, that:

- (1) describe the action taken;
- (2) are signed by all the shareholders, members, or policyholders entitled to vote on the action; and
- (3) are delivered to the corporation for inclusion in the minutes or for filing with the corporate records.

(g) The record date for determining shareholders, members, or policyholders entitled to take action without a meeting is the date the first shareholder, member, or policyholder signs the consent under subsection (f).

(h) Action taken under subsection (f) is effective when the last shareholder, member, or policyholder signs the consent, unless:

- (1) the consent specifies a different prior or subsequent effective date, **in which case the effective date is the date specified in the consent; or**
- (2) **the consent does not specify a different prior or subsequent effective date and action taken under subsection (f) is taken electronically in accordance with IC 26-2-8, in which case the effective date is determined in accordance with IC 26-2-8.**

(i) A consent signed under subsection (f) has the effect of a meeting vote and may be described as a meeting vote in any document.

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SECTION 6. IC 27-1-7-8 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Except as otherwise provided
 in the articles of incorporation or in this section, every shareholder in
 a stock insurance company shall have the right, at every shareholders'
 meeting, to one (1) vote for each share of stock standing in his name on
 the books of the corporation. No share shall be voted at any meeting:

(1) which shall have been transferred on the books of the
 corporation within such number of days, not exceeding fifty (50),
 next preceding the date of such meeting as the board of directors
 shall determine, or, in the absence of such determination, within
 ten (10) days next preceding the date of such meeting; or

(2) which belongs to the corporation that issued it.

(b) Shares standing in the name of a corporation, other than the
 issuing corporation, may be voted by such officer, agent or proxy as the
 board of directors of such corporation may appoint or as the by-laws of
 such corporation may prescribe.

(c) Shares held by fiduciaries may be voted by the fiduciaries in
 such manner as the instrument or order appointing such fiduciaries may
 direct. In the absence of such direction, or the inability of the
 fiduciaries to act in accordance therewith, the following provisions
 shall apply:

(1) Where shares are held jointly by three (3) or more fiduciaries,
 such shares shall be voted in accordance with the will of the
 majority.

(2) Where the fiduciaries, or a majority of them, can not agree, or
 where they are equally divided upon the question of voting such
 shares, any court having general equity jurisdiction may, upon
 petition filed by any of such fiduciaries, or by any party in
 interest, direct the voting of such shares as it may deem to be for
 the best interest of the beneficiaries, and such shares shall be
 voted in accordance with such direction.

(d) Unless otherwise provided in the agreement of pledge, or in the
 by-laws of the corporation, shares that are pledged may be voted by the
 shareholder pledging such shares until the shares shall have been
 transferred to the pledgee on the books of the corporation, and
 thereafter such shares may be voted by the pledgee.

(e) Shares issued and held in the names of two (2) or more persons
 shall be voted in accordance with the will of the majority, and if a
 majority of them can not agree, or if they are equally divided as to the
 voting of such shares, the shares shall be divided equally between or
 among such persons for voting purposes.

(f) A shareholder, including any fiduciary, may vote either in person

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1 or by proxy ~~executed in writing~~ **signed** by the shareholder or a duly
 2 authorized attorney in fact. Unless a longer time is expressly provided
 3 therein, no proxy shall be valid after eleven (11) months from the date
 4 of its execution.

5 SECTION 7. IC 27-1-7-9 IS AMENDED TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2009]: Sec. 9. Except as otherwise provided in
 7 the articles of incorporation, every policyholder or member, in all
 8 companies other than stock companies, shall have the right to one (1)
 9 vote at every policyholders' or members' meeting, regardless of the
 10 number of policies or amount of insurance ~~to the~~ **the policyholder or**
 11 **member** may have with such company.

12 Any policyholder or member may vote either in person or by proxy
 13 ~~executed in writing~~ **signed** by the policyholder or by a duly authorized
 14 attorney in fact. Unless a longer time is expressly provided therein, no
 15 proxy hereafter given shall be valid after eleven (11) months from the
 16 date of its execution.

17 SECTION 8. IC 27-1-7-10 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) The business of
 19 every corporation shall be managed by a board of directors, composed
 20 of not less than five (5) nor more than the maximum number fixed in
 21 the articles of incorporation. The exact number of directors to serve for
 22 each year shall be determined from time to time, in such manner as the
 23 bylaws prescribe.

24 (b) The first board of directors shall be elected by the incorporators
 25 and shall hold office until the first annual meeting of the shareholders,
 26 members or policyholders. At the first annual meeting of the
 27 shareholders, members or policyholders, and at each annual meeting
 28 thereafter, directors shall be elected by the shareholders, members or
 29 policyholders for the term or terms hereinafter prescribed.

30 (c) The articles of incorporation or the bylaws may provide that the
 31 directors may be divided into two (2) or more classes whose terms of
 32 office expire at different times, but no term shall continue longer than
 33 six (6) years. In the absence of such provision, each director, except
 34 members of the first board of directors, shall be elected for a term of
 35 one (1) year and shall hold office until the director's successor is
 36 elected and has qualified.

37 (d) Any vacancy which may occur in the membership of the board
 38 of directors, caused by an increase in the number of directors or
 39 otherwise (except death, resignation, or disqualification), shall be filled
 40 by a majority vote of the remaining members of the board, until the
 41 next annual meeting of the shareholders, members or policyholders. A
 42 vacancy in the membership in the board of directors caused by death,

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1 resignation or disqualification of a member shall be filled by a majority
2 vote of the remaining membership of the board for the unexpired term
3 of the directorship.

4 (e) A majority of the whole board of directors is necessary to
5 constitute a quorum for the transaction of any business except the
6 filling of vacancies, and the act of a majority of the board of directors
7 present at any meeting at which a quorum is present is the act of the
8 board of directors, unless a greater number is required by this article,
9 or by the articles of incorporation or the bylaws.

10 (f) The board of directors may, by a resolution adopted by a majority
11 of the whole board, pursuant to a provision of the bylaws, designate
12 two (2) or more of their number to constitute an executive committee,
13 which, to the extent provided in that resolution or in the bylaws, has all
14 of the authority of the board of directors in the management of the
15 corporation, during the interval between the meetings of the board, but
16 the designation of the committee and the delegation to the committee
17 of such authority does not operate to relieve the board of directors or
18 any member of the board of directors of any responsibility imposed
19 upon it or the member by this article. The minutes of each meeting of
20 the executive committee shall be read at the next succeeding meeting
21 of the board of directors.

22 (g) Meetings of the board of directors may be held at such time at
23 the principal office of the corporation or at such other place as may be
24 unanimously designated by the board of directors, and upon the notice
25 provided in the bylaws. **Notice by electronic transmission is written**
26 **notice.** Unless otherwise provided by the articles of incorporation or
27 bylaws, a member of the board of directors or of a committee
28 designated by the board may participate in a meeting of the board or
29 committee by means of a conference telephone or similar
30 communications equipment by which all persons participating in the
31 meeting can communicate with each other, and participation by these
32 means constitutes presence in person at the meeting.

33 (h) Unless otherwise provided in the articles of incorporation or
34 bylaws, an action required or permitted to be taken at a meeting of the
35 board of directors or of a committee of the board may be taken without
36 a meeting if:

37 (1) before the action is taken, ~~a one (1) or more written consent~~
38 **consents, which include consents signed by electronic means,**
39 to the action ~~is are~~ signed by all members of the board or of the
40 committee; and

41 (2) the written ~~consent is~~ **consents are** filed with the minutes of
42 the proceedings of the board or the committee.

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Actions taken without a meeting under this subsection are organic actions (as defined in IC 26-2-8-102).

(i) Every director, when elected, shall take and subscribe an oath that he will, insofar as the duty devolves upon him, faithfully, honestly and diligently administer the affairs of such corporation, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to any such corporation.

(j) A director may be removed in any manner provided by the articles of incorporation. Unless the articles of incorporation provide otherwise, a director may be removed, with or without cause, by a majority vote of:

- (1) the shareholders of a stock company;
- (2) the members or policyholders of a mutual company qualified to elect directors; or
- (3) the directors.

(k) A director may be removed under this subsection:

- (1) only at a meeting called for the purpose of removing the director; and
- (2) the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 68, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-1-2-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. Unless and to the extent limited or prohibited in the articles of incorporation or bylaws of a corporation, IC 26-2-8 applies to this article.**

SECTION 2. IC 27-1-7-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 1.3. As used in this chapter, "deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand or mail, commercial delivery, and electronic transmission.**

SECTION 3. IC 27-1-7-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 1.5. As used in this chapter, "electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for retention, retrieval, and reproduction of information by the recipient.**

SECTION 4. IC 27-1-7-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 1.7. As used in this chapter, "sign" or "signature" means:**

- (1) a manual, facsimile, or conformed signature; or**
- (2) an electronic signature (as defined in IC 26-2-8-102).**

SECTION 5. IC 27-1-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. (a) All meetings of shareholders, members, or policyholders shall be held within this state and at the principal office of the corporation, unless otherwise provided in the articles of incorporation.**

(b) An annual meeting of shareholders, members, or policyholders shall be held within five (5) months after the close of each fiscal year of the corporation and at such time within that period as the bylaws may provide. The failure to hold the annual meeting at the designated time shall not work any forfeiture or a dissolution of the corporation.

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The time and place of such annual meeting of a mutual company may be stated in the policies thereof or notice of such meeting shall be given as provided in subsection (d).

(c) Special meetings of the shareholders, members, or policyholders may be called by the president, by the board of directors, by shareholders, members, or policyholders holding not less than one-fourth (1/4) of all of the shares or policies outstanding and entitled by the articles of incorporation to vote on the business proposed to be transacted thereat, or by such other officers or persons as the bylaws may provide.

(d) A written or printed notice stating the place, day, and hour of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the secretary, or by the officers or persons calling the meeting, to each shareholder, member, or policyholder of record, entitled by the articles of incorporation and by this article to vote at such meeting, at such address as appears upon the records of the corporation: ~~at least thirty (30) days before the date of the meeting;~~

(1) if subdivision (2) does not apply, at least ten (10) business days; or

(2) if notice is mailed by other than first class or registered mail, at least thirty (30) business days but not more than sixty (60) business days;

before the date of the meeting. Notice by electronic transmission is written notice. Notice of any meeting of the shareholders, members, or policyholders may be waived in writing by any shareholder, member, or policyholder if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

(e) Unless otherwise provided in the articles of incorporation or by the provisions of this article or the bylaws, at any meeting of the shareholders, members, or policyholders, a majority of the shares of the outstanding capital stock entitled by the articles of incorporation to vote at such meeting or in the case of a company other than a stock company, not less than ten percent (10%) of the policyholders or members entitled to vote at such meeting, represented in person or by proxy, shall constitute a quorum.

(f) Unless otherwise provided in the articles of incorporation or bylaws, action to be taken at a meeting of shareholders, members, or policyholders may be taken without a meeting if the action is taken by all the shareholders, members, or policyholders entitled to vote on the

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action. **Actions taken without a meeting under this subsection are organic actions (as defined in IC 26-2-8-102).** The action must be evidenced by one (1) or more written consents, **which includes consents signed by electronic means**, that:

- (1) describe the action taken;
- (2) are signed by all the shareholders, members, or policyholders entitled to vote on the action; and
- (3) are delivered to the corporation for inclusion in the minutes or for filing with the corporate records.

(g) The record date for determining shareholders, members, or policyholders entitled to take action without a meeting is the date the first shareholder, member, or policyholder signs the consent under subsection (f).

(h) Action taken under subsection (f) is effective when the last shareholder, member, or policyholder signs the consent, unless:

- (1) the consent specifies a different prior or subsequent effective date, **in which case the effective date is the date specified in the consent; or**
- (2) **the consent does not specify a different prior or subsequent effective date and action taken under subsection (f) is taken electronically in accordance with IC 26-2-8, in which case the effective date is determined in accordance with IC 26-2-8.**

(i) A consent signed under subsection (f) has the effect of a meeting vote and may be described as a meeting vote in any document.

SECTION 6. IC 27-1-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Except as otherwise provided in the articles of incorporation or in this section, every shareholder in a stock insurance company shall have the right, at every shareholders' meeting, to one (1) vote for each share of stock standing in his name on the books of the corporation. No share shall be voted at any meeting:

- (1) which shall have been transferred on the books of the corporation within such number of days, not exceeding fifty (50), next preceding the date of such meeting as the board of directors shall determine, or, in the absence of such determination, within ten (10) days next preceding the date of such meeting; or
- (2) which belongs to the corporation that issued it.

(b) Shares standing in the name of a corporation, other than the issuing corporation, may be voted by such officer, agent or proxy as the board of directors of such corporation may appoint or as the by-laws of such corporation may prescribe.

(c) Shares held by fiduciaries may be voted by the fiduciaries in

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such manner as the instrument or order appointing such fiduciaries may direct. In the absence of such direction, or the inability of the fiduciaries to act in accordance therewith, the following provisions shall apply:

(1) Where shares are held jointly by three (3) or more fiduciaries, such shares shall be voted in accordance with the will of the majority.

(2) Where the fiduciaries, or a majority of them, can not agree, or where they are equally divided upon the question of voting such shares, any court having general equity jurisdiction may, upon petition filed by any of such fiduciaries, or by any party in interest, direct the voting of such shares as it may deem to be for the best interest of the beneficiaries, and such shares shall be voted in accordance with such direction.

(d) Unless otherwise provided in the agreement of pledge, or in the by-laws of the corporation, shares that are pledged may be voted by the shareholder pledging such shares until the shares shall have been transferred to the pledgee on the books of the corporation, and thereafter such shares may be voted by the pledgee.

(e) Shares issued and held in the names of two (2) or more persons shall be voted in accordance with the will of the majority, and if a majority of them can not agree, or if they are equally divided as to the voting of such shares, the shares shall be divided equally between or among such persons for voting purposes.

(f) A shareholder, including any fiduciary, may vote either in person or by proxy ~~executed in writing~~ **signed** by the shareholder or a duly authorized attorney in fact. Unless a longer time is expressly provided therein, no proxy shall be valid after eleven (11) months from the date of its execution.

SECTION 7. IC 27-1-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. Except as otherwise provided in the articles of incorporation, every policyholder or member, in all companies other than stock companies, shall have the right to one (1) vote at every policyholders' or members' meeting, regardless of the number of policies or amount of insurance ~~he the policyholder or member~~ may have with such company.

Any policyholder or member may vote either in person or by proxy ~~executed in writing~~ **signed** by the policyholder or by a duly authorized attorney in fact. Unless a longer time is expressly provided therein, no proxy hereafter given shall be valid after eleven (11) months from the date of its execution."

Page 2, line 34, after "bylaws." insert "**Notice by electronic**

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transmission is written notice."

Page 3, line 3, strike "a" and insert "**one (1) or more**".

Page 3, line 3, delete "or electronic".

Page 3, line 3, strike "consent" and insert "**consents, which include consents signed by electronic means,**".

Page 3, line 4, strike "is" and insert "**are**".

Page 3, line 6, delete "or electronic".

Page 3, line 6, strike "consent is" and insert "**consents are**".

Page 3, between lines 7 and 8, begin a new line blocked left and insert:

"Actions taken without a meeting under this subsection are organic actions (as defined in IC 26-2-8-102)."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 0068 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 10, Nays 0.

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